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7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 JESUS MARTINEZ MENDOZA,  
12 JAVIER CABRERA, AURELIANO  
FLORES,

13 Plaintiffs,

14 vs.

15 JOHN W. VOJTECH, CBC FRAMING,  
16 INC., A CALIFORNIA  
CORPORATION AND DOES 1-10,

17 Defendant.

CASE NO.: C08 01675 HRL

[Assigned to Hon. Howard R. Lloyd  
for all purposes]

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT;  
[PROPOSED] ORDER THEREON**

[Fed. R. Civ. Proc. 26]

Date: July 22, 2008  
Time: 1:30 p.m.  
450 Golden Gate Ave.  
Courtroom 10, 19th Floor  
San Francisco, CA 94102

Complaint Filed: 3/27/08

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21 **TO THE HONORABLE HOWARD R. LLOYD, MAGISTRATE**  
22 **JUDGE FOR THE UNITED STATES DISTRICT COURT, NORTHERN**  
23 **DISTRICT, FOR THE STATE OF CALIFORNIA:**

24 Pursuant to Fed. R. Civ. Proc. 26(f) and Local Rule 16-9, counsel for  
25 Plaintiffs and Defendants met by telephone on June 23, 2008. Plaintiffs JESUS  
26 MARTINEZ MENDOZA, JAVIER CABRERA, and AURELIANO FLORES  
27 ("Plaintiffs") were represented at the meeting by and through their legal counsel  
28 James Dal Bon, of the Law Offices of James Dal Bon; Defendants CBC

1 FRAMING, INC. and JOHN W. VOJTECH ("Defendants") were represented at  
 2 the meeting by and through their legal counsel Mark T. Palin and Christopher S.  
 3 Milligan, of the law firm of Atkinson, Andelson, Loya, Ruud & Romo. The  
 4 Parties hereby submit the following Joint Case Management Conference  
 5 Statement.

6 1. **Jurisdiction/Venue**

7 Plaintiffs do not include jurisdictional allegations in their Complaint, but  
 8 allege that jurisdiction in this matter arises under the Fair Labor Standards  
 9 ("FLSA") and that the Court's has supplemental jurisdiction over Plaintiffs' state  
 10 law claims. Plaintiffs further allege that venue is proper because Plaintiffs  
 11 performed the majority of their work in San Ramon, Contra Costa County,  
 12 California.

13 2. **Facts**

14 Plaintiffs allege that they were employees of Defendants and regularly  
 15 worked in excess of 8 hours in a day and 40 hours in a week without properly  
 16 being paid overtime.

17 Defendants deny that Plaintiffs worked any unpaid overtime. Defendants  
 18 further deny that Plaintiffs were employees of the individual defendant, John  
 19 Vojtech ("Vojtech"). Plaintiffs have recently agreed to dismiss Vojtech without  
 20 prejudice.

21 3. **Legal Issues**

22 Plaintiffs allege that they were employees of Defendants and regularly  
 23 worked in excess of 8 hours in a day and 40 hours in a week without properly  
 24 being paid overtime. Plaintiffs seek unpaid overtime under the FLSA and  
 25 California law, liquidated damages under FLSA, "waiting time" penalties, interest,  
 26 attorneys' fees and costs.

27 Defendants deny that Plaintiffs are owed any unpaid overtime, damages,  
 28 liquidated damages, "waiting time" penalties, interest, attorneys' fees and/or costs.

1 Defendants also deny that Plaintiffs were employees of the individual defendant,  
2 Vojtech, or that Vojtech can otherwise be held liable for alleged unpaid wages,  
3 damages, penalties, interest, attorneys' fees and/or costs. Plaintiffs have agreed to  
4 dismiss Vojtech without prejudice.

5 4. **Motions**

6 Plaintiffs do not currently anticipate filing a dispositive motion but reserve  
7 the right to file a motion for summary judgment and/or partial summary  
8 adjudication.

9 Defendants plan to file a motion for summary judgment and/or partial  
10 summary adjudication.

11 Both Parties reserve the right to file any necessary discovery motions, or  
12 any other necessary motion, although neither party currently anticipates such  
13 necessity.

14 5. **Amendment of the Pleadings**

15 Plaintiffs have agreed to dismiss Vojtech without prejudice. Plaintiffs do  
16 not anticipate any further amendments to the Complaint.

17 6. **Evidence Preservation**

18 The Parties agree that they will take any necessary steps to preserve  
19 evidence related to the issues evidence in this action, and will interdict any  
20 document destruction program and/or any ongoing erasures of emails, voicemails,  
21 and/or other electronically recorded material.

22 7. **Disclosures**

23 The Parties agree that they will timely and fully comply with the initial  
24 disclosure requirements of Fed. R. Civ. Proc. 26(a), and will disclose all items set  
25 forth therein.

26 8. **Discovery**

27 The Parties have not yet engaged in any discovery processes. The Parties  
28 anticipate that discovery will encompass all of the Parties' various claims and

defenses. Pursuant to Fed. R. Civ. Proc. 26(f), the following is the Parties' proposed discovery plan:

(1) Changes in Timing, Form or Requirement for Initial Disclosures: The Parties do not believe that any changes are necessary in the timing, form or requirement for the initial disclosures required by Fed. R. Civ. Proc. 26(a).

(2) Subjects on Which Discovery May Be Needed: The Parties believe that discovery will encompass all of the Parties' various claims and defenses, including Plaintiffs' claim that they are owed unpaid overtime wages and any related claims.

Completion of Discovery: The Parties agree that the discovery cut-off should be May 1, 2009;

Conduct of Discovery in Phases: The Parties agree that discovery need not be conducted in phases or be limited to or focused upon certain issues.

(3) Changes in Limitations on Discovery: The Parties agree that no changes are needed to the limitations imposed by the Fed. R. Civ. Proc. or Local Rules. The Parties further agree that no other limitations need be imposed.

9. **Class Actions**

Not applicable. The Parties agree that this case is not a class action.

10. **Related Cases/Proceedings**

The Parties are unaware of any related cases or proceedings.

11. **Relief**

Plaintiffs seek the following relief: compensatory damages per Labor Code § 1194 for alleged unpaid overtime wages, liquidated damages per the FLSA, restitution of alleged unpaid overtime per Business & Professions Code § 17203;

1 waiting time penalties per Labor Code § 203, damages and penalties for alleged  
 2 inadequate pay statements per Labor Code § 226, pre-judgment interest, and  
 3 attorneys' fees and costs.

4 Defendants seek the following relief: that Plaintiffs should take nothing by  
 5 way of their Complaint, dismissal of Plaintiffs' Complaint in its entirety with  
 6 prejudice, and attorneys' fees and costs.

7 **12. Settlement and ADR**

8 Pursuant to ADR Local Rule 3-5, the Parties met and conferred on June 23,  
 9 2008. The Parties believe that the prospects for settlement are good. The Parties  
 10 agreed to court-sponsored mediation. The Parties will file an ADR certification to  
 11 this effect concurrently with or prior to the filing of this Joint Case Management  
 12 Conference Statement.

13 **13. Consent to Magistrate Judge**

14 The Parties consent to proceed before U.S. Magistrate Judge Howard R.  
 15 Lloyd for all purposes.

16 **14. Other References**

17 The Parties have not agreed to a reference to binding arbitration, special  
 18 master or the Judicial Panel on Multipanel Litigation.

19 **15. Narrowing of Issues**

20 The Parties have not agreed to a narrowing of issues.

21 **16. Expedited Schedule**

22 The Parties do not agree that this case can be handled on an expedited basis  
 23 with streamlined procedures.

24 **17. Scheduling**

25 The Parties propose the following scheduling dates:

- 26 (A) Designation of Experts: March 1, 2009;
- 27 (B) Discovery Cutoff: May 1, 2009;
- 28 (C) Dispositive Motion Hearing Cut-off: June 2, 2009;

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1 (D) Pre-trial Conference: July 6, 2009; and

2 (E) Trial: July 20, 2009.

3 18. Trial

4 Plaintiffs filed a Jury Demand at the time they filed their initial Complaint.

5 19. Non-Party Interested Entities or Persons


6 Plaintiffs have not yet filed a Certification of Non-Party Interested Entities  
7 or Persons but will do so prior to the July 22, 2008 Case Management Conference.

8 Defendant CBC Framing, Inc. will file its Certification of Non-Party  
9 Interested Entities or Persons at the time of the filing its response, which is  
10 currently due on or before July 8, 2008 pursuant to the stipulation of the Parties.

11 Respectfully submitted,

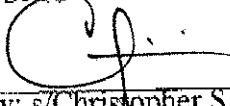
12 DATED: July 8, 2008

13 LAW OFFICES OF JAMES DAL BON

14 By:    
15 Attorneys for Plaintiffs

16 DATED: July <sup>9</sup>/<sub>8</sub>, 2008

17 ATKINSON, ANDELSON, LOYA, RUUD &  
18 ROMO

19    
20 By: s/Christopher S. Milligan  
21 Attorneys for Defendants  
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**[PROPOSED] CASE MANAGEMENT ORDER**

The Parties' Joint Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the Parties are ordered to comply with this Order. In addition the Court orders:

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Magistrate Judge

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